



Staff Report

Conditional Use Permit: CP5-96 Mount Rainier Resort at Park Junction Third Status Hearing

Application Number: 913779

Parcel Numbers: 0515232001, 0515261016, 0515262009, 0515262004, 0515261002,
0515261000, 0515252003, 0515264003

Examiner's Hearing: July 31, 2019, at 9:00 a.m., at the Pierce County Public Services Building (Annex), South Entrance, Public Meeting Room, 2401 South 35th Street, Tacoma, WA.

Proposal: The purpose of this hearing is to review the progress of the previously approved 420-acre master planned resort. The proposed resort included the following: 18-hole golf course, 270-room lodge, 500-person conference center, tennis center, swimming pools/spa, restaurants, 300 condominiums, 20,000-square-foot retail center, 120 employee housing units, train station, interpretive center, and sewage plant. The resort remains un-built aside from logging in 2004.

Project Location: The site is zoned Rural 10 (R10), Rural 40 (R40), and Agricultural Resource Land (ARL), within the Upper Nisqually Valley Community Plan area, located adjacent to SR706, halfway between Elbe and Ashford, and 11 miles from Mt. Rainier National Park, in Sections 23, 25, and 26 of T15N, R5E, W.M., in Council District #3.

Staff Summary: In 2001, the Pierce County Hearing Examiner originally approved this proposal. The approval required subsequent tri-annual review hearings. The purpose of the hearing is to review the status of the development. In January 2014, the last status hearing occurred. In February 2014, the Examiner issued a decision granting more time. As of February 2017, this project was due for another status hearing. The staff report summarizes the history of this project not only since 2017, but all the way back to its inception in 1994.

If the Examiner approves additional time, Staff requests that:

1. The Applicant submit to the Examiner a specific list of benchmarks/tasks for each phase that could be used to justify progress and future time extension requests; and
2. The Applicant submit to the Examiner a completion date for each phase and the project as a whole.

County Contact: Ty Booth, Planner, ty.booth@piercecountywa.gov, 253-798-3727

Pierce County Online Permit Information:

<https://pals.piercecountywa.gov/palsonline/#/permitSearch/permit/departmentsStatus?applPermitId=913779>



Project Data

Complete Application Date: June 24, 2019

Staff Report Mailed: July 23, 2019

Property Owner/Applicant: Park Junction LLC
PO Box 802
Elbe, WA 98330-0802

Applicants' Attorney: Gordon, Thomas, Honeywell
Attn: William Lynn, Attorney at Law
P.O. Box 1157
Tacoma, WA 98401-1157
BLynn@gth-law.com

Legal and Public Notice

- *July 3, 2019:* Agenda of the Examiner's hearing was sent to:
 - Parties of record from past Examiner decisions; and
 - Applicable government agencies.
- *July 3, 2019:* Legal notices were published, respectively, in the official County newspaper (*Tacoma News Tribune*), and *Eatonville Dispatch* newspaper, advertising the public hearing to be held by the Pierce County Hearing Examiner.

Note: As this is not a new conditional use permit application, the County did not send notice to current abutting property owners within 300 feet/2 parcels from the site (unless they are listed at the end of the Examiner's previous decisions).

History (July 1994-June 2019)

July 5, 1994	The following applications were submitted with the County: <ol style="list-style-type: none">1. Rezone from General Rural (GR) to Community Commercial (C-2). The application also requested Planned Development District (PDD) approval. The rezone/PDD was designated as Case No. Z14-94/PDD;2. Environmental review; and3. Wetland review.
November 22, 1994	Determination of Significance (DS) issued by County. This means that preparation of an Environmental Impact Statement (EIS) is required.
March 31, 1995	Wetland review application submitted with the County (subsequently approved).

February 26, 1996	Revised application submitted with the County. The rezone/PDD application was revised to a Conditional Use Permit (CP) application. The application was designated as Case No. CP5-96. The Applicant chose to revise their application in response to changes contained within the new 1994 County Comprehensive Plan, which became effective January 1, 1995, and the new Pierce County Zoning Code, which became effective July 21, 1995. The site was now zoned R10. The Zoning Code allowed a master planned resort (MPR) in the R10 zone upon the granting of a CP.
January 8, 1997	Draft Environmental Impact Statement (DEIS) issued by the County.
September 16, 1999	Final Environmental Impact Statement (FEIS) issued by the County.
September 30, 1999	Appeal of FEIS filed by Tahoma Audubon Society, National Parks and Conservation Association, and Pierce County Fire Protection District #23. The appeal was designated as Case No. AE6-99.
January 1, 2000	Upper Nisqually Valley Community Plan becomes effective.
January 18, 2000	County receives a letter dated January 13, 2000, from Fire Protection District #23. The letter stated, in part, that they were withdrawing from the environmental appeal.
May 31 to June 2, 2000	Examiner holds public hearings for CP and environmental appeal.
June 5 to June 8, 2000	Examiner holds public hearings for CP and environmental appeal.
October 23, 2000	Examiner issues decision approving the CP and denying the environmental appeal. The approval was subject to 108 conditions.
November 1, 2000	Request for Reconsideration of Examiner's decision filed by Tahoma Audubon Society, National Parks and Conservation Association, and County.
January 12, 2001	Examiner issues Reconsideration decision. The decision revises the prior decision and was subject to 106 conditions of approval. Condition 35 requires status hearings and states the following:

“The Hearing Examiner shall hold tri-annual review hearings. The purpose of the hearings will be to review the status of the development, as well as its consistency with the Hearing Examiner’s conditions of approval and FEIS mitigation measures. Of special interest is the success of the habitat management plan. Prior to each review hearing, the Applicant shall provide the Hearing Examiner and Staff with a written status report detailing each Hearing Examiner condition of approval and FEIS mitigation measure and their level of compliance with each. Should the Hearing Examiner have no issues, after consulting with Staff, the tri-annual review may be canceled for that year. Should the Hearing Examiner have issues, the hearing shall be held, and notice sent to parties of record. Subsequently, the Hearing Examiner will determine what course of action, if any necessary, should be taken regarding the development. Further, the Hearing Examiner may determine that no future tri-annual review hearings are necessary.”

February 2, 2001	The Tahoma Audubon Society files an appeal with Thurston County Superior Court. The appeal alleges several errors in the Examiner’s decision.
June 6, 2003	Superior Court issues decision. The Court determined that the 500-person conference center was not allowed. Specifically, pursuant to the County’s critical areas regulations, only a maximum of 300 people were allowed as it would be located in a volcanic hazard area. The applicant subsequently appeals the decision to the State Court of Appeals.
August 21, 2003	Wetland review application submitted with the County (subsequently expired).
April 2004	County Resource Management Division issues wetland and fish/wildlife approval subject to a number of conditions that need to be met before any actual site work commences.
April 28, 2004	Forest practices application (to log portions of site) submitted with the County (subsequently approved).
May 25, 2005	Site development application (to clear and grade, install roads, stormwater systems, etc.) submitted with the County (subsequently expired).
August 3, 2005	State Court of Appeals issues a decision that reverses the Superior Court decision and upholds the Examiner’s decision.

April 27, 2012	Status hearing application (for first status hearing) submitted with the County.
June 6, 2012	Examiner holds first status hearing (at Ashford Fire Station).
September 27, 2012	Examiner issues decision requiring that a second status hearing be held in six to nine months.
February 26, 2013	Meeting held at the County to discuss the proposal and what is necessary to move it forward. The meeting was attended by the Applicant, Applicants' Attorney, Applicants' engineering firm, County Staff (Planner and Biologist), and County Attorney.
April 25, 2013	One of the principal Applicants (Selwyn Bingham) passed away.
May 2, 2013	Applicants' Attorney sends letter to the Examiner informing him of the death and requests a three-month delay for the next hearing.
May 28, 2013	Examiner issues memorandum agreeing to a three-month delay.
August 23, 2013	Applicants' Attorney sends letter to the Examiner informing him that Mr. Bingham's estate was conducting a formal appraisal of the proposal. The letter essentially stated that the appraisal is necessary before they can determine a future course of action.
August 29, 2013	Examiner issues a memorandum agreeing to a delay of the next hearing but stating that it shall be set for late January 2014.
January 15, 2014	Examiner holds second status hearing. The County recommended approval of more time. As stated in the Examiner's 2014 decision, factors outside of their control consisted of the great recession and death of a major partner.
January 16, 2014	Status hearing application (for second status hearing) submitted with the County.
February 11, 2014	Examiner issues tri-annual review decision. The decision states that "The first tri-annual review for Mount Rainier Resort at Park Junction discloses that the applicant has generally complied with conditions of approval imposed as part of the conditional use permit process and has also generally complied with all mitigating measures set forth in the FEIS. The applicant has also shown that is has made reasonable progress on completion of the project considering factors outside of its control. However, these factors are now resolve and future progress on completion of the project should be as originally contemplated."

February 27, 2014	Site development application submitted with the County (subsequently expired).
May 18, 2015	Wetland review application submitted with the County (subsequently expired).
January 19, 2016	Wetland review application (for review of revised wetland mitigation materials) submitted with the County (subsequently expired).
December 2016	County sent an email to the Applicant stating that the need for another status hearing was approaching (as three years had gone by since the last status hearing) and requested a status report.
February 2017	Status report submitted by Applicant to the County.
August 2017	County sent an email to the Applicant stating that it would recommend, at the next status hearing, that no additional time be granted for this proposal.
September 13, 2017	County sent a letter to the Examiner stating a status hearing was necessary and that it would be recommending denial.
September 18, 2017	Examiner issued a letter requesting another status hearing be set for after November 1, 2017.
September 2017- August 2018	County repeatedly contacted the Applicant's Attorney. The inquiries first centered on if they were still involved and whether the Applicant was still going to pursue this proposal or not.
July 2018	State Ecology issued a letter to the Applicant stating that the water right permit would be cancelled in the sixty days if additional information was not provided.
August 2018	<p>Various activity as follows:</p> <ol style="list-style-type: none"> 1. County Council holds public hearing on Agricultural Resource Land (ARL) zoning proposal. The Applicant testified as the proposal involved the site. 2. State Ecology and Applicant meet. 3. County inquires with State Ecology and Health regarding the status of their reviews on the water right and water/sewer plans. The County was informed of the following: <ol style="list-style-type: none"> A. Sewer system plan: State Ecology granted approval in 2014. However, it was a general approval. This still requires the Applicant submit plans/specifications; B. Water system plan: State Health had not yet received water system plans (for their review/approval) from the Applicant; and

- C. Water right permit: State Ecology was on the verge of cancelling the permit. The reason being is that the Applicant should be in the phase of their permit where they should be close to completing the construction of the water system. However, construction had not yet started.

September 2018	County Planning and Public Works Department, Assistant Director, sends letter to the Examiner stating that the County is aware of a deadline associated with the State water right permit. The letter further stated that the County would like to postpone the 3 rd status hearing until such time that State Ecology makes a determination on the water right permit. It further stated that if the water right permit was extended, that would represent significant progress moving the project forward and negate the need for the revocation hearing.
October 2018	State Ecology issued a letter to the Applicant stating that the water right permit was extended to July 2021. Note, the County filed a public records request with Ecology to find out what the Applicant provided to Ecology to justify the extension request. In response, it appeared the Applicant primarily asserted permitting challenges with the County (specifically related to wetland review).
December 2018	Various activity as follows: <ol style="list-style-type: none">1. County Development Engineering Division was contacted by the Applicant's engineering firm expressing an interest in moving forward with the proposal.2. One of the principal Applicants (Cora Adams) and her daughter tragically passed away.
January 2019:	County determined it would delay the 3 rd status hearing for six months due to the death.
June 7, 2019	Site development application (for excavation, clearing, and grading for a portion of Phase I) submitted with the County.
June 24, 2019	Status hearing application (for third status hearing) created with the County.

Status of Project (as of July 2019)

1. County:

- A. County Development Engineering Division: Until the new site development application was submitted in June 2019, all other prior applications had expired.
- B. County Resource Management Division status: There are no current applications. Past applications have expired. Note, separate from this report, a memo will be presented to the Examiner providing additional details as to what has occurred regarding County wetland review since the 2nd status hearing in 2014.

C. County Building Division: No building permit applications have ever been submitted.

2. State:

A. Washington State Department of Ecology:

- (1) Water right: Applicant has been given additional time to continue to obtain their permits and secure funding, so they can move forward. The permit is considered to be in good standing and Applicant has been exercising reasonable diligence in developing their water right.
- (2) Sewer Plan: General Sewer Plan approved in 2014. However, there are additional requirements to meet prior to construction (engineering report, hydrogeologic report, plans, and specifications).

B. Washington State Department of Health: Water system plan was submitted November 26, 2018, and the review was completed on February 5, 2019. Health is now awaiting a resubmittal dealing with their comments and issues.

Note: Per an Examiner condition, the County cannot issue any permits until the Applicant has demonstrated they have utility approval (the site is going to have wells, large water system, sewage plant, and extensively utilize reclaimed water). State Ecology and Health are the primary agencies on those approvals. It appears much remains to be completed. County Staff has requested both agencies attend the hearing and has also encouraged the Applicant to do what they can to have those agencies attend.

3. General:

- A. Twenty-five years have passed since the original application was submitted.
- B. Fourteen years have passed since the Court of Appeals decision was issued.
- C. Other than logging of the site approximately 14 years ago, no construction has occurred.
- D. The events of September 11, 2001 had an impact on travel and tourism nationwide.
- E. The great recession (late 2000s) were lost years in terms of land development. Since the recession, County and State elected officials passed ordinances allowing more time for various types of projects.
- F. Since the end of the great recession, the nation has been in a historically long stretch of economic recovery.
- G. Since the application was submitted, two of the principal applicants have passed away.
- H. Many in the public are likely unsure of the project status. At the time of approval in 2001, support for the proposal was split.
- I. Currently the site is zoned Rural 10 (R10), Rural 40 (R40), and Agricultural Resource Land (ARL). It is within the Upper Nisqually Valley Community Plan area (which came into effect after the proposal was submitted). Current regulations allow approval of a master planned resort on the site. However, a different two-step approval process is now required. Step one requires the County Council approve a rezone from R10/R40/ARL to Master Planned Resort (MPR). Step two requires the Examiner approve a Planned Unit Development (PUD) permit.

List of Exhibits Provided to the Pierce County Hearing Examiner

1. STAFF REPORT
2. APPLICATION:
 - A. Email from Ty Booth to Sylvia Cleaver and Rick Adams, dated December 16, 2016
 - B. Email from Sylvia Cleaver Shepherd to Ty Booth, dated February 10, 2017, with attached Department of Ecology (DOE) letter, Mt. Rainier Resort at Park Junction letter, and CUP Conditions Tracking Report, as of April 25, 2011
 - C. Email from Sylvia Cleaver Shepherd to Paul Barber, dated January 10, 2019, with attached CUP Conditions Tracking Report as of April 25, 2018
 - D. Email from Ty Booth to Sylvia Cleaver Shepherd, dated February 4, 2019
 - E. Email from Ty Booth to Sylvia Cleaver Shepherd, dated February 14, 2019
 - F. Applications: 913779 (Yearly progress review hearing); 912235 (Fill and Grade)
3. AGENCY COMMENTS:
 - A. Email from Ty Booth to Sylvia Cleaver Shepherd, dated December 29, 2014
 - B. Email from Ty Booth to Sylvia Cleaver Shepherd, dated August 17, 2017
 - C. Email from Ty Booth to Departments of Ecology (DOE) and Health (DOH) with attached Agenda, dated July 5, 2019
 - D. Emails between Ty Booth and DOE, with attachments regarding water rights
 - E. Emails from DOH regarding Water Plan
 - F. Emails from DOE regarding Sewer
 - G. Emails from DOH regarding Sewer
 - H. Email and attachments from Dale Severson with Department of Transportation (WSDOT)
 - I. Email from DOE, dated July 9, 2019
 - J. Memorandum from Dave Risvold, Environmental Biologist to Ty Booth, dated July 22, 2019
4. PARTIES OF RECORD/PUBLIC COMMENTS:
 - A. Parties of Record
 - B. Email from Kirk Kirkland to Ty Booth, dated July 10, 2019
 - C. Email from Kirk Kirkland to Ty Booth, dated July 18, 2019
 - D. Email from Kirk Kirkland to Ty Booth, dated July 22, 2019
5. NOTICE AND ROUTING DOCUMENTS:
 - A. Scheduling letter dated June 12, 2019, for the July 31, 2019 Examiner's Hearing
 - B. Agenda, mailing lists, and legal notices for the July 31, 2019, Examiner's Hearing
6. REPORTS AND DECISIONS:
 - A. Decision of the Pierce County Hearing Examiner for CP5-96 and AE6-99, Mt. Rainier at Park Junction, dated January 12, 2001
 - B. Report and Decision of the Hearing Examiner for CP5-96 Progress Hearing, dated September 27, 2012
 - C. Report and Decision of the Hearing Examiner for CP5-96 Second Progress Hearing, dated February 11, 2014
 - D. Letter from Ty Booth to Stephen Causseaux, Hearing Examiner, dated September 13, 2017
 - E. Letter from Stephen Causseaux, to Ty Booth, dated September 18, 2017
 - F. Letter from Melanie Halsan Assistant Director to Stephen Causseaux, dated September 18, 2018
7. SITE INFORMATION:
 - A. 2003 County Approved Final Development Plan – Phase 1
 - B. 2011 County Photo for Mount Rainier at Park Junction Case No. CP5-96
 - C. 2017 County Photo for Mount Rainier at Park Junction Case No. CP5-96
 - D. 2017 Google Earth Photo

Please note: A complete set of exhibits may be found at the following link:
<https://pals.piercecountywa.gov/palsonline/#/permitSearch/permit/documents?applPermitId=913779>